IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARY COURTNEY T et al.,	:	
	:	CIVIL ACTION
Plaintiffs,	:	
	:	06-2278
v.	:	
	:	
SCHOOL DISTRICT OF PHILADELPHIA,	:	
	:	
Defendant.	:	

MEMORANDUM AND ORDER

Anita B. Brody, J. **January 22, 2009**

Plaintiffs seek an award of $90,356.56 in attorney's fees and costs for prevailing in their lawsuit against the School District of Philadelphia in a matter arising out of a claim for reimbursement for their daughter's special education under the Individuals with Disabilities in Education Act. The Defendant opposes the request, arguing that the Plaintiffs' success was limited, the attorneys billed excessive hours at unreasonable rates, attorney time was not recorded with specificity, and time was billed for non-chargeable services. The Defendant contends that attorney's fees should be reduced accordingly to no more than $19,084.00. The Defendant also objects to paying costs in the amount of $4,005 for the expert fee associated with an independent educational evaluation.

I. Background

Mary Courtney T. ("MCT") is a young woman who suffers from psychiatric disorders including attention-deficit hyperactivity disorder ("ADHD") and bi-polar disorder. These illnesses prevented her from attending regular school so the School District of Philadelphia (the "District") provided her with a specialized Free Appropriate Public Education ("FAPE")

program as required by the Individuals with Disabilities in Education Act, 42 U.S.C. § 1401 et seq. ("IDEA"). From May 23, 2005, through January 26, 2006, MCT resided at a secure residential treatment facility in New York called Supervised Lifestyles ("SLS"). I found that MCT had been denied a FAPE for the period between October 12, 2005 and January 26, 2006 during which MCT was residing at SLS. On May 30, 2008, I awarded Plaintiffs $61,900.00 for MCT's tuition and expenses at SLS for that period. On January 31, 2008, I granted summary judgment for the District on Plaintiffs' non-IDEA claims.

II. Standard of Review

Under IDEA, the Court may award reasonable costs and attorney's fees to a party who prevails in litigation. 20 U.S.C. § 1415(1)(3)(B). Generally, parties are considered prevailing parties if "they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." J.O. ex. rel. C.O. v. Orange Twp. Bd. of Ed., 287 F.3d 267, 270 (3d Cir. 2002) (citing Hensely v. Eckerhart, 461 U.S. 424 (1983)).

In deciding the reasonableness of counsel fees for a prevailing party, the court must determine a "lodestar," which is a calculation based on the number of hours reasonably expended by the attorneys on the litigation multiplied by a reasonable hourly rate. Hensely, 461 U.S. at 433. The party seeking the award has the burden of establishing, by submitting "evidence supporting the hours worked and rates claimed," that its request for attorney's fees are reasonable. Rode v. Dellaciprete, 892 F.2d 1177, 1183 (3d Cir. 1990) (citing Hensley, 461 U.S. at 433). Once the lodestar is determined, "it is presumed to be the reasonable fee." Lanni v. New Jersey, 259 F.3d 146, 149 (3d Cir. 2001). However, while the lodestar may be presumptively reasonable "it may still require subsequent adjustment" after considering the objections of the opposing party. United Auto Workers Local 259 Social Sec. Dept. v. Metro

Auto Center, 501 F.3d 283, 290 (3d Cir. 2007); See also Bell v. United Princeton Properties, Inc., 884 F.2d 713, 721 (3d Cir. 1989) ("The district court retains a great deal of discretion in deciding what a reasonable fee award is, so long as any reduction is based on objections actually raised by the adverse party."). The opposing party may challenge, and the district court may exclude, charges that are "excessive, redundant, or otherwise unnecessary." Hensely, 461 U.S. at 434. An award may also be reduced where the documentation of hours is inadequate, or the hours have been improperly billed. Id. The court can also adjust the lodestar downward if the lodestar is not reasonable in light of the results obtained. Rode, 892 F.2d at 1183.

III. Discussion

The School District does not dispute that Plaintiffs are the prevailing party in this matter and are entitled to reasonable attorney's fees. (Def.'s Resp. to Mot. of Pl. for Counsel Fees (hereinafter, "Response") at 1). However, the School District maintains that the fee award should be reduced because (a) the hourly rates charged by some of the Plaintiffs' attorneys are unreasonable; (b) the fee petition contains time entries that are too vague and unspecified to be considered; (c) Plaintiffs have included charges for non-billable work related to trial, experts, and an ongoing litigation; and (d) the Plaintiffs did not achieve complete success in their litigation against the School District. I consider each of the District's objections in arriving at a final calculation of a reasonable attorney fee award in this matter.

A. Reasonableness of Hourly Rates

In reviewing hourly rates of attorneys, the district court must "assess the experience and skill of the prevailing party's attorneys and compare their rates to the current market rates prevailing in the community for similar services by lawyers of reasonably comparable skill,

experience, and reputation." Rode, 892 F.2d at 1183; Blum v. Stenson, 465 U.S. 886, 895 (1984). The prevailing party bears the burden of establishing by way of satisfactory evidence, "in addition to [the] attorney's own affidavits," that their requested hourly rates meet this standard. Blum, 465 U.S. at 895 n. 11; Sheffer v. Experian Information Solutions, Inc., 290 F.Supp.2d 538, 543 (E.D.Pa. 2003). The opposing party "then has the burden to challenge, by affidavit or brief with sufficient specificity to give fee applicants notice, the reasonableness of the requested fee." Rode, 892 F.2d at 1183.

Plaintiffs' fees petition is based on approximately 28.13 hours spent on the case by partner Dennis McAndrews at an hourly rate of $375;[1] 190.38 hours spent by associate David Painter at an hourly rate of $270;[2] 73.25 hours spent by associate Gabrielle Serini at an hourly rate of $270;[3] 6.00 hours spent by partner Heidi Konkler-Goldsmith at an hourly rate of $250; 13.13 hours spent by senior paralegal Jan Hardy at an hourly rate or $120; and 0.63 hours spent by junior paralegal Marie Molnar at an hourly rate of $85.[4]

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[1]Plaintiffs request an additional 0.13 hours spent by Dennis McAndrews at a rate of $325. (Pl.'s Mot. for Counsel Fees (hereinafter, "Motion") Ex. A at 2).

[2]Plaintiffs request an additional 0.13 hours spent by David Painter at a rate of $240. (Motion Ex. A at 2).

[3]Plaintiffs request an additional 4.00 hours spent by Gabrielle Sereni at a rate of $260. (Motion Ex. A at 37).

[4]In their objections, the Defendant provided the court with detailed break-outs and sub-totals for each of Plaintiffs' attorney's fees by hour and by hourly rate. Plaintiffs did not provide a similarly detailed break-out for the Court, so I refer to the Defendant's timekeeper summaries herein, noting that Defendant's calculation of total hours and amount may vary slightly from Plaintiffs'.

The District objects that the hourly rates of associates David Painter, Gabrielle Sereni, and Heidi Konkler-Goldsmith are excessive.[5] David Painter has worked exclusively in the areas of special education and civil rights law since he was admitted to practice in 2003. Mr. Painter also brings special expertise to the practice of education law in that Mr. Painter holds a Ph.D. in School Psychology and was a School Psychologist for over twenty years prior to becoming an attorney. The District believes that as a fifth-year associate, Mr. Painter's hourly rate should be reduced from $270 to $160. Ms. Serini is in her ninth year of practice and has practiced exclusively in special education, education, and civil rights litigation. Upon graduation from law school, Ms. Serini served as a federal law clerk for the Honorable Robert F. Kelly. Prior to law school, Ms. Serini taught in the Pennsylvania public school system and has earned a Masters Degree in Education. Serini also seeks an hourly rate of $270, which the District believes should be reduced to $200. Heidi Konkler-Goldsmith is the supervising attorney of the Berks County office of McAndrews Law Offices and has practiced special education law since she was admitted to practice in 1999. The School District submits that Konkler-Goldsmith's hourly rate of $250 should be reduced to $200.

In support of their fee petition, Plaintiffs have submitted the resumes of each attorney[6] and a chronological list of tasks performed by each attorney, including the date on which the work was performed and an estimate of how long each attorney spent on each task described. Plaintiffs also submit the affidavits of Caryl Andrea Oberman, Esq., and Lorrie McKinley, Esq.,

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[5]The District does not object to Mr. McAndrews' hourly rate of $375, or to the hourly rates of the senior paralegal ($120) and the junior paralegal ($85). I find that based on the evidence submitted, these rates are reasonable.

[6] The resume of Heidi Konkler-Goldsmith was not submitted.

both experienced attorneys practicing special education law in Pennsylvania.[7] The affidavits of Ms. Oberman and Ms. McKinley attest that the hourly rates charged by Plaintiffs' attorneys are consistent with prevailing rates for similarly skilled and experienced attorneys in the area.

The District does not challenge these affidavits, or any other evidence submitted by Plaintiffs, but bases its objection to Plaintiffs' attorneys' hourly rates on the lower rates contained in the fee schedule published in 1996 by Community Legal Services ("CLS"). The District contends that the CLS fee schedule has been accepted by the Third Circuit and district courts as a fair reflection of the prevailing market rates for attorneys in Philadelphia.

While the District is correct that the Third Circuit has accepted the CLS fee schedule in some circumstances, such as where the attorney seeking recoupment of fees was associated with CLS,[8] or where limited evidence was submitted by the parties;[9] I find that it would be inappropriate to apply the CLS fee schedule here. This case does not involve CLS-affiliated

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[7]Plaintiffs also submitted the affidavit of Dennis C. McAndrews, Esq., President of McAndrews Law Offices and lead partner on this case. Mr. McAndrews has practiced in the field of disability law for approximately twenty-six years, however, his affidavit is given limited weight in this context where "[a]n attorney's showing of reasonableness must rest on evidence other than the attorney's own affidavits." Holmes v. Millcreek Twp. Sch. Dist., 205 F.3d 583, 595 (3d Cir. 2000); Blum, 465 U.S. at 895 n. 11.

[8]See Rainey v. Phila. Housing Auth., 832 F. Supp. 127, 129 (E.D. Pa. 1993) (applying CLS rate where attorney employed by CLS); Swaayze v. Phila. Housing Auth., No. 91-2982, 1992 WL 81598, at *2 (E.D. Pa. Apr. 16, 1992) (applying CLS rate where attorney associated with CLS); Farley v. Phila. Housing Auth., 2002 WL 32348272, at *2 (E.D. Pa. Apr. 29, 2002) (using CLS rate where attorney employed by CLS).

[9]See Maldonado v. Houston, 256 F.3d 181, 183 (3d Cir. 2001) (using the CLS fee schedule as an indicator of prevailing rates where neither party provided sufficient evidence of reasonable hourly rates); Melissa G.V. Sch. Dist. of Philadelphia, 2008 WL 160613, at *3 (E.D. Pa. Jan. 14, 2008) (crediting CLS schedule where attorney had "submitted very little" upon which the court could evaluate his experience with IDEA litigation).

attorneys, nor is it a case where the parties failed to submit sufficient evidence of prevailing market rates. Furthermore, the CLS schedule does not take into account any specialized skills or experience the attorneys bring to their practice, which are factors I am to consider in evaluating attorney's fees. Rode, 892 F.2d at 1183. Finally, the CLS schedule, published in 1996, does not reflect current rates. See e.g., Lanni, 259 F.3d at 149 ("When attorney's fees are awarded, the current market rate must be used."). The current market rate is the rate at the time of the fee petition, not the rate at the time the services were performed. Id. The fee petition was filed in 2008; therefore, 2008 rates must be used. Other than the outdated CLS fee schedule, Defendants have not provided any other probative contradictory evidence of currently prevailing market rates. I find that the Plaintiffs have provided sufficient evidence of prevailing hourly rates for an evaluation of reasonableness, and I find that evidence to be credible.[10] Based on this evidence, I find the hourly rates requested for attorneys David Painter ($270), Gabrielle Serini ($270), and Heidi Konkler-Goldsmith ($250) to be reasonable.

B. Reasonableness of Hours Charged

1. *Unspecified and Vague Entries*

To account for the number of hours charged, Plaintiffs have submitted a nearly fifty (50) page document chronologically listing the dates when the work was performed, the initials of the attorney performing the work, the time spent by each attorney on each task, and a brief description of the work performed. The District challenges certain of Plaintiffs' time entries for

[10]On at least two prior occasions courts in this district have found the requested hourly rates for associates Sereni and Painter to be reasonable. See Damian H. v. School District of Philadelphia, No. Civ. A. 06-3866, 2008 WL 1815302 (E.D.Pa. Apr. 22, 2008)(Sanchez, J.); Ryan P. v. School District of Philadelphia, No. Civ. A. 07-2903, 2008 WL 724604 (E.D.Pa. Mar. 18, 2008)(Strawbridge, J.).

vagueness and lack of specificity. The District objects that all time entries for "review of file materials" or "review of records", where the materials or records are not identified, should be excluded from the lodestar. Defendants also object that time entries for "interoffice communications" are not documented sufficiently to be properly included in the lodestar. (Response at 6-10).

A fee petition must be specific enough to allow the district court to determine if the hours claimed are unreasonable for the work performed. Washington v. Philadelphia Cty. Ct. of C.P., 89 F.3d 1031, 1037 (3d Cir. 1996); Keenan v. City of Phila., 983 F.2d 459, 472 (3d Cir. 1992). Plaintiffs must provide "some fairly definite information as to the hours devoted to various general activities, e.g., pretrial discovery, settlement negotiations, and the hours spent by various classes of attorneys, e.g., senior partners, junior partners, associates." Washington, 89 F.3d at 1037-38 (citing Rode, 892 F.2d at 1190). However, "it is not necessary to know the exact number of minutes spent nor the precise activity to which each hour was devoted nor the specific attainments of each attorney." Id. Fee petitions containing words such as "review," "research," "prepare," "letter to," and "conference with" have been deemed acceptable, so long as they provide "enough information as to what hours were devoted to various activities and by whom." Washington, 89 F.3d at 1038 (citing Rode, 892 F.2d at 1191).

I find that while some of Plaintiffs' time entries "could have benefitted from added specificity," the itemized list provided by Plaintiffs is sufficiently specific for me to make a determination as to the reasonableness of the hours claimed for the work performed. United Auto Workers Local 259 Social Sec. Dept., 501 F.3d at 290; See also Washington, 89 F. 3d at 1038 (accepting itemized list that included the date when the work was performed, the attorney performing the work, and the nature of the work).

2. *Unrelated Matters*

The District objects that time entries referencing "trial preparation" should be stricken because this case was submitted on the administrative record and did not proceed to trial. In addition, Defendants object to two entries related to expert reports and expert depositions on the ground that the District did not engage an expert or proffer an expert report in this matter. (Response at 11). A court must review the time charged and decide "whether the hours set out were reasonably expended for each of the particular purposes described." Sheffer, 290 F.Supp.2d at 544. For work to be included in the calculation of reasonable attorney's fees, the work must be "'useful and of a type ordinarily necessary' to secure the final result obtained from the litigation." Planned Parenthood of Central N.J. v. Attorney Gen. of the State of N.J., 297 F.3d 253, 266 (3d Cir. 2002) (citing Penn. v. Del. Valley Citizens' Council, 478 U.S. 546, 561 (1986)). Trial preparation was not necessary in this case. The time entries relating to trial, totaling $556.89 in attorney's fees, will be stricken. Likewise, the entries referencing time spent in connection with the District's expert, totaling $249.38, are not relevant to this case and will be deducted.[11]

3. *Duplicative Billing*

The District next objects that the time entries by attorney McAndrews related to preparation for the due process hearing and judicial conference should be excluded as

[11]With respect to time spent on experts, the District objects to one entry on March 26, 2007 that is logged as "Prepare for expert Depositions" and a second entry on June 3, 2007 that reads "Review of District's Discovery Responses and expert report." (Motion Ex A at 34, 36). It is conceivable that these entries were intended to refer to the Plaintiffs' expert deposition and expert report. However, Plaintiffs do not offer an explanation for these vague and unspecified entries and the way they are described in the fee petition is ambiguous such that I find the Defendant's objection to be well-founded.

duplicative because McAndrews did not attend or participate in the due process hearings or judicial conference. (Response at 12). The challenged time entries amount to 1.77 hours of work and a total of $650.02 in attorney's fees. Reductions for duplicative hours may be made "if the attorneys are *unreasonably* doing the same work." Rode, 892 F.2d at 1187 (emphasis in original). Plaintiffs argue that it is not unreasonable for a senior partner to collaborate or instruct a more junior attorney with respect to a due process hearing or judicial conference. See Dorazio v. Capitol Speciality Plastics, Inc., No. Civ. A. 01-6548, 2003 WL 1145408 (E.D.Pa. Mar. 13, 2003) (recognizing the importance of consulting with senior counsel during major cases in analyzing reasonableness of fees); Sheffer, 290 F.Supp.2d at 547 (acknowledging that "reasonable trial preparation entails collaboration and rehearsal among attorneys" while finding time spent on trial prep by two lead counsel to be duplicative).

I find it reasonable that Mr. McAndrews, the lead counsel responsible for this case, would prepare for the due process hearing alongside of the less experienced associates assigned to this matter. Furthermore, from a review of the fee petition, it does not appear that Mr. McAndrews' preparation for the proceedings was *per se* duplicative of the work of other associates. Mr. McAndrews is the only attorney who billed any time specifically to "Preparation for Due Process hearing" whereas Mr. Painter, for example, appears to have engaged in other itemized tasks such as preparing the due process demand letter, and communicating with witnesses and opposing counsel. See e.g., Planned Parenthood, 297 F.3d at 272 (upholding fee request where plaintiffs' fee petition established appropriate staffing by demonstrating that the various attorneys were assigned specific tasks). Given the importance of these proceedings in the context of the litigation as a whole, the limited amount of time Mr. McAndrews billed to

these tasks, and Mr. McAndrews' role as lead advisor in this matter, I find these charges to be reasonable.

4. *Time Regarding IEE Not Chargeable*

The District next argues that time entries regarding the services rendered by Dr. Lisa Goldstein and Dr. Andrew Klein, who were retained by the Plaintiffs as experts in this matter, are not chargeable under IDEA. The Supreme Court has held that IDEA does not authorize the award of expert fees. See Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy, 126 S. Ct. 2455 (2006) (following Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437 (1987) and West Virginia University Hospitals, Inc. v. Casey, 499 U.S. 83 (1991) in holding that an award of "costs" under a fee-shifting statute does not authorize the award of expert fees).

Plaintiffs respond that they are not seeking reimbursement for Dr. Klein's services as an expert witness, but rather for the Independent Educational Evaluation ("IEE") that he provided for MCT and which disabled children and their parents are entitled to under IDEA. The Plaintiffs' fee petition indicates that they began billing for the services of an independent educational evaluator in November of 2005, around the same time that they filed their administrative claim. On October 3, 2006, Plaintiffs moved this court pursuant to 20 U.S.C. § 1415(e)(2) to supplement the administrative record with the "expert" report of Dr. Klein. The Plaintiffs offered Dr. Klein's expert report "for the purpose of illuminating for the Court the nature of the SLS placement and establishing that it is, indeed, the sort of placement for which the District should be held financially responsible in [MCT's] case." (Mot. for Introduction of Add'l Evidence at 6). As such, Dr. Klein provided his services as an expert witness on key liability issues in this matter, not as an IEE challenging the School District's evaluation.

Therefore, Dr. Klein's expert fees are not chargeable under IDEA's fee-shifting statute. Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy, 126 S. Ct. 2455 (2006).

However, Dr.Klein's expert fees, which I will not allow, are different from a request for attorney's fees for time spent working with an expert witness in connection with a litigation. See Melissa G. v. Sch. Dist. of Phila., No. 06-5527, 2008 WL 160613, at *4 (E.D. Pa. 2008) (holding that attorney time spent consulting education experts in IDEA litigation was compensable) (citing U.S. ex rel. John Doe I v. Penn. Blue Shield, 54 F. Supp. 2d 410 (M.D. Pa. 1999) (finding attorney's fees for consulting a litigation expert reasonable)). The time entries that Defendant objects to include multiple entries reflecting communications with the IEE, preparing documents for the IEE, and reviewing the expert report. These are tasks that a attorney reasonably would undertake in working with an expert witness in a litigation. See e.g., Marisol A. ex rel. Forbes v. Giuliani, 111 F.Supp.2d 381 (S.D.N.Y. 2000) ("It is a reality of complex litigation such as this that both parties will engage in a great deal of case preparation . . . . Such work may include reviewing documents, interviewing witnesses, and, like the present case, working with experts. So long as a reasonable attorney would engage in the work under similar circumstances, the Court will not prevent plaintiffs from recovering their fees."). I find that it was reasonable of the Plaintiffs to seek to supplement the record with expert testimony on the nature of the SLS placement, and I find that billing 11.3 hours of work in connection with Dr. Klein and his report is also reasonable under the circumstances.

5. *Time Relating to Subsequent Due Process Request*

Defendant objects that the Plaintiffs have requested reimbursement for $353.13 of attorney's fees in connection with a subsequent due process claim related to MCT's January

2006 through July 2006 SLS stay. (Response at 15). That due process hearing request was filed on or about February 7, 2008, after I had issued judgment in this matter. The outcome of that hearing is currently being litigated by the Plaintiffs in a separate complaint. (See Compl., No. 2:09-cv-002000). Plaintiffs are entitled only to attorney's fees where they are the prevailing party in the matter. The prevailing party is one that has "obtained relief of significant import" in the litigation. Hensely v. Eckerhart, 461 U.S. 424, 429 (1983). Although there may be circumstances where a district court would award attorney's fees based on the litigant's success in a particular stage of an ongoing litigation (see Institutionalized Juveniles v. Secretary of Public Welfare, 758 F.2d 897, 919 n.36 (3d. Cir. 1985) (considering ongoing enforcement of a structural injunction as an example where success would come in stages)), this due process hearing is the subject of a distinct litigation in which the Plaintiffs must prevail in order to claim attorney's fees. I will therefore deduct the $353.13 in fees related to Plaintiff's continuing litigation from the lodestar.

6. *Time Relating to MCT's Post-January 26, 2006 SLS Stay*

I awarded Plaintiffs reimbursement in the amount of $61,900.00 for MCT's stay at SLS for the period from October 12, 2005 through January 26, 2006. The District argues that, therefore, any time entries related to litigating claims related to MCT's stay at SLS after January 26, 2006 should be eliminated from the lodestar. It is appropriate for the court to reduce an award of attorney's fees when the Plaintiffs have only limited or partial success. Hensley, 461 U.S. at 440. However, "there is no precise formula for making these determinations. The district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success." Id. at 437. See also Rode, 892 F.2d at 1183. The litigation over MCT's entitlement to reimbursement for her stay at SLS arose out of a

"common core of facts," which included MCT being at SLS over a period of time inclusive of dates post-January 26, 2006. In cases where the facts and issues are interrelated, "the district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." Hensley, 461 U.S. at 434. I therefore decline to single out time entries related to aspects of the litigation that in hindsight were not successful. However, I will reduce the overall award to reflect Plaintiffs' partial success.

C. Reduction for Partial Success

The Supreme Court is clear that "[w]here a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee." If, on the other hand, a plaintiff has achieved only "partial or limited success," a reduction in the fee award may be warranted. Hensley, 461 U.S. at 437. The District identifies two aspects of the litigation as indicia that Plaintiffs achieved only limited or partial success in their litigation against the District and should therefore have their attorney's fees reduced: (1) Plaintiffs' amended complaint sought relief under four theories, three of which were rejected by the court on summary judgment; and (2) on the single claim that Plaintiffs prevailed on, they were awarded only a portion of their sought-after relief. Based on this outcome, the District argues that the lodestar should be reduced by three-quarters to no more than $19,084.

1. *Three Out of Four of Plaintiffs' Legal Theories Rejected*

Plaintiff's central claim throughout this litigation was for tuition reimbursement for MCT's placement at SLS on the theory that the District had failed to offer her an appropriate educational placement and program, thereby denying her the FAPE she was entitled to under IDEA. Plaintiff sought relief under IDEA, and alternatively under Section 504 of the

Rehabilitation Act of 1973 ("Section 504"),[12] Section 1983 of the Civil Rights Act of 1964, 42 U.S.C. § 1983("Section 1983")[13] and 22 Pa. Code. § 12.4.[14] I rejected all of Plaintiffs' non-IDEA claims on summary judgment. (Jan. 31, 2008 Order at 15-16). The School District argues that because the majority of Plaintiffs' legal claims failed, the lodestar should be reduced.

The Supreme Court has held that "[l]itigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters." Hensley, 461 U.S. at 436. See also Sheffer, 290 F.Supp.2d at 547 (holding that a "mathematical approach comparing the total number of issues in the case with those actually prevailed upon" is not a favored method for calculating a lodestar") (citing Hensley, 461 U.S. at 435 n. 11). Plaintiffs achieved a partially successful result in this case, notwithstanding the dismissal of three alternative grounds for relief. Following the Supreme Court's guidance in Hensley, I find no basis for a reduction in the fee award based on the dismissal of these related claims. 461 U.S. at 440 ("Where a lawsuit

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[12]Section 504 of the National Rehabilitation Act requires the identification of all disabled children and the provision of appropriate educational services: "[A] public elementary or secondary education program shall annually undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education and take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart." 29 U.S.C. Section 794; 34 C.F.R. Section 104.32.

[13]At the time that Plaintiffs filed their Amended Complaint in 2006, the Third Circuit recognized an independent cause of action under 42 U.S.C. Section 1983 for alleged violations of IDEA and Section 504 of the Rehabilitation Act. Matula was subsequently overruled by A.W. v. Jersey City Pub. Sch., 2007 U.S. App. LEXIS 12167 (3d Cir. 2007) (holding that violations of IDEA and the Rehabilitation Act are not actionable under Section 1983).

[14]22 Pa. Code § 12.4 provides that "consistent with the Pennsylvania Human Relations Act, a student may not be denied access to a free and full public education. . ."

consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt each contention raised.").

2. *Plaintiffs Did Not Achieve Complete Success*

The School District's second argument for a reduction of the lodestar is that even though Plaintiffs were successful, their success was only partial. If a plaintiff has achieved limited success, even where claims were "interrelated, nonfrivolous, and raised in good faith," a fully compensatory award may be excessive. Hensley, 461 U.S. at 440 ("A reduced fee award is appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole.").

Plaintiffs originally sought reimbursement in the amount of $247,400.00 for MCT's entire fourteen month SLS stay. (Jan. 31, 2008 Order at 7; Response at 2). After being denied relief at the administrative level, the Plaintiffs appealed to this court to overturn the decision of the Special Education Appeals Panel. After over three years of litigation, the Plaintiffs ultimately prevailed in their claim that MCT was denied a FAPE by the District and were awarded reimbursement in the amount of $61,900.00 for nearly 4 months that MCT spent at SLS between October 12, 2005 and January 26, 2006 (the time during which I found that MCT had been denied a FAPE). However, I also found that the District had *not* denied MCT a FAPE and was *not* liable for MCT's tuition at SLS for the period of May 23, 2005 to October 12, 2005 because the transitional, non-academic SLS residential programming purchased by MCT's parents during that period did not constitute "special education" within the meaning of the

IDEA.[15] Thus, although Plaintiffs' success was substantial, it was not complete, nor was it excellent. I therefore find that a reduction of the fee award is appropriate in this case.

In determining how much of a discount to apply, the "most critical factor" to evaluate is "the degree of success obtained." Hensley, 461 U.S. at 437. Where the degree of success is limited, as it is in this case, "the district court should award only that amount of fees that is reasonable in relation to the results obtained." Id. at 440. There is no precise formula to apply when making a reduction of attorney's fees based on lack of success. Hensley, 461 U.S. at 436. One measurement of the level of success that courts have employed compares the amount of damages awarded to the amount of damages requested.[16] See Washington, 89 F.3d at 1043 (finding that reduction of attorney's fees by half was appropriate where plaintiff requested more than $750,000.00 in damages and the jury awarded a "nominal" victory of $25,000.00); Sheffer, 290 F.Supp.2d at 551 (reducing fee award from $126,000 to $25,000 where plaintiff obtained less than one percent of total relief sought). Other courts have employed a more holistic approach. See Damian J. v. Sch. Dist. of Phila., No. 06-3866, 2008 WL 1815302, at *5 (E.D.Pa. Apr. 22, 2008) (reducing award by 5% where plaintiff proved he had been denied a FAPE for

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[15]As I previously held, IDEA only requires the District to reimburse parents for the costs of instruction that constitutes an end in itself. Transitional instruction that fills the gap until ultimate instruction can be provided is not reimbursable. I found that up until October 12, 2005, MCT's SLS placement did not contain any appreciable academic component. MCT's regimen at SLS focused on behavioral and emotional strategies, and was intended as a segue into actual academic instruction rather than an end in itself. Therefore, I found that this instruction did not constitute reimbursable "special education" under IDEA. (See Jan. 31. 2008 Order).

[16]It should be noted that this assessment is distinct from a proportionality analysis between the amount of damages awarded and the amount of counsel fees requested, which is an impermissible basis upon which to reduce a fee award. United Auto Workers Local 259 Social Sec. Dept., 501 F.3d at 290 (rejecting a rule of proportionality in civil rights cases); Sheffer, 290 F.Supp.2d at 550-51.

only part the total time claimed, but all claims were interrelated and non-frivolous, and attorneys provided skilled representation); Reid v. School Dist. of Philadelphia, No. 03-1742, 2005 WL 174847 (E.D. Pa. 2005) (reducing award by approximately half where partial summary judgment was entered for Defendants on all but one count and Plaintiffs had re-litigated issues that had already been settled).

In this case, Plaintiffs sought reimbursement for MCT's entire fourteen month stay at SLS. After three years of litigation and the successful appeal of a judgment by the Special Education Appeals Panel, the Plaintiffs were vindicated with respect to their claim that MCT had been denied a FAPE for some period of time and awarded $61,900.00 for approximately four months of her fourteen month SLS stay. With respect to the remaining period of time at issue, I found that the District had not denied MCT a FAPE. Because Plaintiffs' award reflects less than 30% of the amount sought, the District submits that the lodestar should be reduced by 75%. The degree of success Plaintiffs achieved in this case was limited, but it was not negligible or nominal. Taking into account the procedural history of the case, the duration of the litigation, the size of the administrative record, the caliber of representation provided by counsel, and considering also the significance of the overall relief obtained in relation to the hours reasonably expended, I find that a reduction of 75% would be excessive. I will, however, reduce attorney's fees by 45% to reflect Plaintiffs' partial success.

D. Costs

The Plaintiffs seek reimbursement for costs in the amount of $4,390.51. The District objects only to the $4,005.00 expert fee charged for the independent educational evaluation conducted by Andrew Klein. As discussed above, the services rendered by Dr. Klein as a expert

witness in this case are not chargeable under IDEA. I will therefore deduct $4,005.00 and award Plaintiffs the remaining $385.51 they have requested in costs.

IV. Conclusion

Based on my determination of reasonable rates and hours, the applicable lodestar figure was reduced from the starting request of $85,966.05 to $84,806.65. I have further reduced that figure by 45% (or $38,162.99) to reflect Plaintiffs' partial success for a total award of $46,643.66 in attorney's fees. (See Appendix A). I also award $385.51 in costs. (Id.). An appropriate order follows.

APPENDIX A
FEE SUMMARY

Attorney's fees

Starting request:	$85,966.05
Deduction for trial related entries	- $556.89
Deduction for expert related entries	- $249.38
Deduction for ongoing litigation	- $353.13
Lodestar Sub Total	*$84,806.65*
Deduction for Partial Success	- $38,162.99 (= 45%)
Total fees	***$46,643.66***

Costs

Starting request:	$4,390.51
Deduction for Expert fees	- $4,005.00
Total costs	***$385.51***

TOTAL FEES AND COSTS	**$47,029.17**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

	:	
MARY COURTNEY T et al.,	:	
	:	CIVIL ACTION
Plaintiffs,	:	
	:	06-2278
v.	:	
	:	
SCHOOL DISTRICT	:	
OF PHILADELPHIA,	:	
Defendant.	:	

ORDER

AND NOW, this __22nd_____ day of January, 2009, in consideration of the Plaintiffs' Motion for Counsel Fees (Doc. #36) and Defendant's response thereto, it is **ORDERED** that Plaintiffs' Motion is **GRANTED** in part as follows:

Pursuant to 20 U.S.C. § 1415(1)(3)(B), Defendants are **ORDERED** to pay Plaintiffs' reasonable attorney's fees in the amount of $46,643.66 and $385.51 for costs ($47,029.17 in total).

BY THE COURT:

s/Anita B. Brody

_____

Anita B. Brody, J